IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTIETH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No. 18836 of 2005

Between:

B. Bal Reddy

..... PETITIONER

AND

Station Commandant,

Secunderabad & Executive Officer,

Secunderabad Cantonment, Secunderabad

And 2 others

.....RESPONDENTS

ORDER:

Challenging the impugned notice dated 16.08.2005, the present writ petition is filed.

The petitioner claims that he is the owner of the property mentioned in the writ petition and he has been enjoying the same by paying property taxes to the concerned. While so, the

1st respondent issued the impugned notice dated 16.08.2005 under Section 4(1)(b)(ii) of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to show cause why the petitioner should not be evicted from the subject property. Therefore, the petitioner is constrained to approach this Court by filing this writ petition.

Heard the learned counsel on either side.

The learned counsel for the petitioner contended that when there is prima facie evidence to show that the premises in question belong to the Government, then only the provisions under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short 'the Act) have to be invoked, and as there is *bona fide* dispute of title and also long standing possession of the petitioner, the same cannot be decided by the Estate Officer, and therefore, he lacks jurisdiction and hence he prays to allow the writ petition.

On the other hand, the learned counsel for the 1st respondent and the learned Assistant Solicitor General, appearing for the 2nd respondent contended that it is only show cause notice calling for explanation and under Sections 4 and 5 of the Act the petitioner is at liberty to adduce evidence and that all the contentions raised in the writ petition can be raised before the Estate Officer who is the competent authority to issue show cause notice, and therefore, the writ petition is premature.

The show cause notice is issued to the petitioner calling upon him to appear before the Estate Officer through an authorized representative along with evidence, which he intends to produce in support of his claim, on or before 03.09.2005 at 10 a.m. for

personal hearing, which is under challenge in this writ petition.

Since the impugned notice is show cause notice, normally this Court will not interfere with the show cause notice unless the authority who passed that notice lacks jurisdiction. It is not in dispute that the Estate Officer is the competent authority to pass an order in respect of the public premises if occupied by any encroacher. The learned counsel for the petitioner contended that when there is a dispute with regard to *bona fide* title of premises and long standing possession, the same cannot be decided by the authority. That is the question of fact to be decided by the Estate Officer whether *prima facie* the premises in question belong to the Government or the cantonment or the claim of the petitioners in respect of the title of the property is *bona fide* one or not.

Therefore, the writ petition is disposed of with a direction to the petitioner to produce all the relevant documents in support of his claim and also produce the evidence as required under the impugned notice before the Estate Officer, and thereafter, appropriate decision has to be taken by the Estate Officer in accordance with law. Since the time granted by the Estate Officer to the petitioner to submit his explanation and produce evidence would expires by 03.09.2005, it is desirable to extend time for two more weeks from today i.e. till 13.03.2005 for the petitioner to give his explanation as well as to produce evidence before the Estate Officer. Though the proceedings before the Estate Officer is summary in nature, but in view of the fact that the question of bona fide dispute with regard to title as well as *prima facie* title of the cantonment is to be decided, the Estate Officer can permit the petitioner to lead his evidence if he intends to do so. No order as to costs.

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K.C. BHANU,J

Dated: 30.08.2005

Dsr